

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3027 OF 2007

Baban Vaghu Marathe & Anr. .. Petitioners

V/s.

Motiram Raoji Marathe & Ors. .. Respondents

Mr.S.M. Sakhardande with Mrs.S.S. Wagh for the
petitioners.

CORAM : J.P. DEVADHAR, J.

DATED : 11TH JULY, 2007.

P.C. :

1. This petition is filed to challenge the order passed by the Civil Judge, Junior Division, Vadgaon Maval dated 26th August, 2005 in Regular Civil Suit No.62 of 2005 as also the order passed by the 9th Adhoc Additional District Judge, Pune dated 4th February, 2006 in Misc. Civil Appeal No.274 of 2005.

2. In Regular Civil Suit No.62 of 2005, ad-interim injunction was passed on 11th April, 2005 restraining the respondent No.1 from carrying out any further construction over the suit property. By the impugned order dated 26th August, 2005, the Civil Judge, Junior Division, Vadgaon Maval has vacated the interim injunction order dated 11th April, 2005 interalia on the ground that the Municipal Council,

Vadgaon Maval has approved the construction work over the suit property and the said order has been upheld by the 9th Adhoc Additional District Judge, Pune.

3. According to the petitioner, the permission granted by the Municipal Council was for repairs whereas the respondent No.1 has demolished the existing structure and put up new construction.

4. Whether the construction work carried on by the respondent is in accordance with the permission or not is a question that can be gone into at the trial. Moreover, if the construction has already been carried out, there is no question of granting stay at this stage.

5. In this view of the matter, I do not find any infirmity in the impugned order. Accordingly, the petition is dismissed.

6. All contentions of the parties are kept open. The petitioners are at liberty to apply to the Trial Court for expeditious disposal of the Suit.

(J.P. DEVADHAR, J.)